



## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2012-0071]

Social Security Ruling, SSR 13-1p

Titles II and XVI: Agency Processes For Addressing Allegations of Unfairness, Prejudice, Partiality, Bias, Misconduct, or Discrimination by Administrative Law Judges (ALJs)

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling (SSR).

SUMMARY: In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR-13-Xp. This Ruling explains the three separate vehicles we have for addressing complaints of unfairness, prejudice, partiality, bias, misconduct, or discrimination by an administrative law judge (ALJ). First, the Ruling describes the procedures that the Office of Disability Adjudication and Review's (ODAR) Appeals Council follows when it receives such allegations in the context of claim adjudication. Next, the Ruling describes how ODAR's Division of Quality Service reviews or investigates such complaints outside of the claim adjudication process to determine whether ODAR should take any administrative or disciplinary action with respect to the ALJ. Finally, the Ruling describes how the public may file with us complaints of discrimination based on race, color, national origin (including English language ability), religion, sex, sexual orientation, age, disability, or in retaliation for having previously filed a civil rights complaint against the agency. This Ruling supersedes our prior Notice of Procedures: Social Security Administration Procedures Concerning Allegations of Bias or Misconduct by Administrative Law Judges, 57 Fed. Reg. 49186 (October 30, 1992).

EFFECTIVE DATE: (Insert the date of publication in the FEDERAL REGISTER).

FOR FURTHER INFORMATION CONTACT: Rainbow Forbes, Appeals Officer, Office of Disability Adjudication and Review, 5107 Leesburg Pike, Suite 1400, Falls Church, VA 22041, 703-605-7100.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this SSR in accordance with 20 CFR 402.35(b)(1).

Through SSRs, we make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, special veterans benefits, and black lung benefits programs. SSRs may be based on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all of our components. 20 CFR 402.35(b)(1).

This SSR will be in effect until we publish a notice in the Federal Register that rescinds it, or publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004—Social Security—Survivors Insurance; 96.006—Supplemental Security Income)

Dated: January 23, 2013.

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Michael J. Astrue,  
Commissioner of Social Security.

## POLICY INTERPRETATION RULING

TITLES II AND XVI: Agency Processes For Addressing Allegations of Unfairness, Prejudice, Partiality, Bias, Misconduct, or Discrimination by Administrative Law Judges (ALJs)

PURPOSE: This Ruling clarifies the three separate processes we have for addressing allegations of unfairness, prejudice, partiality, bias, misconduct, or discrimination by an ALJ.

CITATIONS (AUTHORITY): Sections 205(b), 809(a), and 1631(c) of the Social Security Act, as amended; Regulations No. 4, subpart J, sections 404.940, 404.967, 404.969, and 404.970, Regulations No. 5, subpart A, sections 405.25 and 405.30, and Regulations No. 16, subpart P, sections 416.1440, 416.1440, 416.1467, 416.1469, and 416.1470.

BACKGROUND: Statements and actions by our adjudicators that display unfairness, prejudice, partiality, bias, misconduct, or discrimination undermine public trust and confidence in our administrative process. Our ALJs perform an essential role in ensuring that our administrative process is fair to claimants by conducting de novo, informal, non-adversarial hearings and issuing decisions for claimants who are dissatisfied with our determinations in claims arising under the Social Security Act. All adjudicators, including our ALJs, must fulfill their duties with fairness and impartiality. We have three separate processes to guard against unfairness in our hearing process: (1) the Appeals Council review process, under which we review hearing decisions in accordance with 20 CFR 404.969, 404.970, 416.1469 and 416.1470, to ensure that ALJs fairly and impartially consider claims for benefits; (2) the Division of Quality Service's ALJ complaint investigation process; and (3) the civil rights investigation process for allegations of discrimination involving unfairness, prejudice, partiality, or bias based on race, color, national

origin (including English language ability), religion, sex, sexual orientation, age, disability, or in retaliation for having previously filed a civil rights complaint. These three processes operate separately from one another and have different focuses. Claimants, parties, and the public may avail themselves of any or all three of the processes, as applicable, and all three processes may occur concurrently.

In this Ruling, we explain these three different processes and emphasize that:

1. The Appeals Council has authority under 20 CFR 404.970 and 416.1470 to act when a party is dissatisfied with a hearing decision or dismissal of a hearing request. Even when a party does not request review, the Appeals Council may initiate review under 20 CFR 404.969 and 416.1469. The Appeals Council considers allegations of unfairness, prejudice, partiality, or bias by ALJs under the standards for review in 20 CFR 404.970 and 416.1470. The Appeals Council may also consider objections from a party stating why a new hearing should be held before another ALJ pursuant to 20 CFR 404.940 and 416.1440. In evaluating such allegations, the Appeals Council considers only the evidence contained in the claimant's administrative record. The Appeals Council's process is the only process set forth herein that allows a claimant to obtain a remedy on the claim for benefits.
2. The Division of Quality Service may review and, if warranted, investigate any complaints against an ALJ, including allegations of unfairness, prejudice, partiality, bias, or misconduct. Under this process, the Division of Quality Service evaluates allegations to determine whether it is necessary to recommend administrative or disciplinary action against an ALJ.
3. Individuals who allege discrimination based on their race, color, national origin (including English language ability), religion, sex, sexual orientation, age, disability, or in retaliation for

having previously filed a civil rights complaint, may also file a separate discrimination complaint with us using our civil rights complaint process.

## POLICY INTERPRETATION

### Allegations of Unfairness, Prejudice, Partiality, Bias, or Misconduct Evaluated in the Appeals Council Claims Review Process

The ALJ's decision is subject to Appeals Council review under 20 CFR 404.970 and 416.1470 if the claimant or other party or his or her representative timely requests review of the ALJ's decision. The Appeals Council may also review the ALJ's decision on its own motion under 20 CFR 404.969 and 416.1469.

The Appeals Council will grant a party's request for review and issue a decision or remand a case when:

- there appears to be an abuse of discretion by the ALJ;
- there is an error of law;
- the action, findings or conclusions of the ALJ are not supported by substantial evidence;
- there is a broad policy or procedural issue that may affect the general public interest; or
- there is new and material evidence submitted that relates to the period on or before the ALJ's hearing decision, and review of the case shows that the ALJ's actions, findings or conclusions are contrary to the weight of the evidence currently of record.

Under our regulations, an ALJ must not conduct a hearing if he or she is prejudiced or partial with respect to any party or has any interest in the matter pending for decision. A claimant or

other party to the hearing who objects to the ALJ who will conduct the hearing must notify the ALJ at his or her earliest opportunity. The ALJ will then decide whether to proceed with the hearing or to withdraw. If the ALJ does not withdraw, the claimant or other party to the hearing may, after the hearing, present objections to the Appeals Council as to reasons why the hearing decision should be revised or a new hearing should be held before another ALJ.

If, in conjunction with a request for review, the Appeals Council receives an allegation of ALJ unfairness, prejudice, partiality, or bias, the Appeals Council will review the claimant's allegations and hearing decision under the abuse of discretion standard. We will find an abuse of discretion when an ALJ's action is erroneous and without any rational basis, or is clearly not justified under the particular circumstances of the case, such as where there has been an improper exercise, or a failure to exercise, administrative authority. For example, if the record shows that the ALJ failed to conduct a full and fair hearing by refusing to allow the claimant to testify or cross-examine witnesses, we will find that an abuse of discretion has occurred. An abuse of discretion may also occur where there is a failure to follow procedures required by law.

An ALJ also abuses his or her discretion if the evidence in the record shows that the ALJ failed to recuse himself or herself from a case in which he or she was prejudiced or partial with respect to a particular claim or claimant, or had an interest in the matter pending for decision. In this instance, we will remand the case to another ALJ for a new hearing or revise the ALJ's decision pursuant to 20 CFR 404.940 and 416.1440.

In considering allegations of unfairness, prejudice, partiality, or bias by the ALJ, the Appeals Council reviews information in the claimant's administrative record to determine whether to consider the alleged actions an abuse of discretion. The Appeals Council relies solely on

information in the administrative record in determining this issue. The Appeals Council does not otherwise investigate the allegations or consider information or evidence that is not a part of the administrative record.

After reviewing the administrative record to evaluate the allegation of unfairness, prejudice, partiality, or bias by the ALJ under the abuse of discretion standard, the Appeals Council will send the claimant a notice, order, or decision explaining that it has considered the allegation under the abuse of discretion standard and stating whether it found an abuse of discretion. The sole remedy the Appeals Council may provide to the claimant is a decision or a remand for further administrative action on the particular claim for benefits under review. When the Appeals Council issues its notice, order, or decision describing its action on the request for review, this concludes its role in the appellate review process. Such action does not involve a referral to the Division of Quality Services, nor does it constitute disciplinary action against an ALJ.

If the Appeals Council receives an allegation that falls outside its jurisdiction, such as an allegation that an ALJ violated personnel regulations or policies, the Appeals Council will process the request for review and acknowledge the allegation.<sup>1</sup> The Appeals Council will then refer the allegation to the Division of Quality Service. Similarly, if the Appeals Council receives an allegation about another issue that is beyond the scope of its authority, such as an allegation that an ALJ shows “general bias” or a pattern of bias or misconduct against a group or particular category of claimants, the Appeals Council will process the request for review and acknowledge

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<sup>1</sup> For example, the Appeals Council does not use ethics or personnel rules to determine whether an ALJ abused his or her discretion. All employees, including our ALJs, must comply with the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635) and SSA’s Standards of Conduct and Annual Personnel Reminders, but these rules are not considered during the Appeals Council’s review of an ALJ’s decision on a disability benefits claim.



the allegation in the notice, order, or decision. The Appeals Council will refer the allegation to the Division of Quality Service. Possible examples of allegations that the Appeals Council will not refer to the Division of Quality Service include, “the ALJ is biased against me [individually]” and “the ALJ is prejudiced because she did not find me disabled.” Possible examples of allegations that the Appeals Council will refer to the Division of Quality Service include, “the ALJ is biased against claimants who receive workers compensation benefits or unemployment benefits” and “the ALJ shows prejudice toward women.”

Additionally, the Appeals Council may identify ALJ conduct that it determines warrants referral to the Division of Quality Service even if a claimant has not alleged it or filed a request for review with the Appeals Council. If the Appeals Council makes such a referral, it will clearly identify and refer the conduct to the Division of Quality Service. The Appeals Council will not reference any referral to the Division of Quality Service in a notice, order, or decision.

#### ALJ Complaint Investigation Process through the Division of Quality Service

We also may receive allegations and complaints about ALJ conduct directly from claimants and other sources, outside of the scope of Appeals Council review. For example, in addition to receiving complaints from individual claimants, we may also receive complaints from witnesses at a hearing, claimant representatives, agency personnel such as those in our Office of the Inspector General (OIG), Members of Congress, and the Federal courts. Within the Office of Disability Adjudication Review (ODAR), the Division of Quality Service collects, reviews, and if warranted, investigates all allegations and complaints, including allegations referred by the Appeals Council under the process described above. The Division of Quality Service is responsible for receiving, tracking, and monitoring complaints that it receives.

This ALJ complaint investigation process is not an additional or alternative way to appeal the decision or dismissal on a claim for benefits. Filing a complaint using this process does not substitute for requesting review by the Appeals Council within the time frames set out in our regulations. If an individual wants to make a formal complaint about a particular ALJ (whether or not that complaint is associated with a particular claim for benefits) and request that management officials investigate the ALJ's conduct, the individual must file the complaint with the Division of Quality Service.

When the Division of Quality Service receives a complaint about an ALJ from a claimant or member of the public, it will acknowledge receipt of the complaint in writing and make reasonable efforts to do so within 60 days from the date it receives the complaint. However, the Division of Quality Service will not acknowledge complaints referred by the Appeals Council or other agency components. If an ODAR Regional Office receives a complaint from a claimant or member of the public about an ALJ, the Regional Office will acknowledge receipt of the complaint in writing and make reasonable efforts to do so within 60 days from the date it receives the complaint. The ODAR Regional Offices will also notify the Division of Quality Service that they received the complaint.

In order for the Division of Quality Service to review or investigate a complaint, the complaint must be filed in writing by the claimant, another party to the hearing, the claimant's representative, someone authorized to act on the claimant's or other party's behalf, or another individual who was present at the claimant's hearing (collectively, the complainant). If we receive the complaint from someone other than the individuals listed above, we will notify that individual that we will not review it. To ensure that we can obtain any necessary information in

a timely manner, we must receive the complaint within 180 days of either the date of the action complained of, or the date the complainant became aware of such conduct. The complaint should contain specific information about the conduct, including where and when it occurred, and whether there were any witnesses. If we do not receive this information, we will inform the complainant of the insufficiency of information, and give him or her 30 days from the date of the notice to supply additional information.

The Division of Quality Service (or its designee) will review all complaints that it receives. A review includes an audit of the hearing recording if available, and an examination of the complaint, the hearing decision, and any other relevant documentation. If the Division of Quality Service's review indicates an investigation is unnecessary, we will close out the complaint and forward it to the appropriate ODAR Regional Office.<sup>2</sup> If the Division of Quality Service determines that an investigation is necessary, the Division of Quality Service will forward the complaint to the appropriate Regional Chief Administrative Law Judge (RCALJ). At the beginning of the investigation, the RCALJ (or his or her designee) will notify the ALJ, give him or her a copy of the complaint, and provide him or her with an opportunity to respond to the complaint. In addition to auditing the hearing recording and examining the complaint, the hearing decision, and any other relevant documentation, an investigation may include contacting any witnesses who have information related to the complaint. Following the investigation, the appropriate RCALJ will prepare a report for the Division of Quality Service's review containing findings and recommending any necessary action regarding the ALJ. Such action could include counseling, training, mentoring, or disciplinary action. Once a review or investigation is

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<sup>2</sup> The ODAR Regional Office or DQS will notify the ALJ pursuant to our contractual obligations. Our current contract governing notification with the Association of Administrative Law Judges, International Federation of Professional and Technical Engineers, AFL-CIO became effective on August 31, 2001.

complete, we will notify the complainant that we processed the complaint. However, we will also explain that the Privacy Act prevents us from disclosing whether there was an investigation and whether we took any action against the ALJ who is the subject of the complaint.

The Division of Quality Service will use the same process described above to review or investigate complaints alleging “general bias” as well as those alleging a pattern of ALJ bias or misconduct against a group of claimants, or a particular category of claimants. In addition, the Division of Quality Service will monitor individual complaints that it receives to identify any patterns of alleged ALJ bias or misconduct against a group of claimants, or a particular category of claimants, for further investigation. If we substantiate these complaints, we will take appropriate action as described in this Ruling.

We may also find after a review or investigation the complaint is unsubstantiated, and we will take no action with respect to the ALJ. Our findings or actions in the Division of Quality Service ALJ complaint investigation process do not constitute findings on a claim for benefits under the Social Security Act. Rather, they represent an action committed to agency discretion by law and are not subject to judicial review.

#### Investigation of Allegations of Discrimination Under Our Civil Rights Complaint Process

A person who was a party to a hearing may file a discrimination complaint with us alleging discrimination in our hearing process based on race, color, national origin (including English language ability), religion, sex, sexual orientation, age, disability or in retaliation for having previously filed a civil rights complaint. Currently, our Office of the General Counsel has the responsibility to investigate and decide complaints that individuals file under this

process. A person who was a party to a hearing may file a discrimination complaint under our civil rights investigation process in addition to filing a request for Appeals Council review or filing a complaint with the Division of Quality Service.

An individual may file a discrimination complaint alleging discrimination by an ALJ by using Form SSA-437-BK (available at <http://www.socialsecurity.gov/online/ssa-437.pdf>); however, an individual is not required to use this form and may make a complaint with a letter that contains the same information. The discrimination complaint must be filed within 180 days of the alleged discriminatory action unless we find there is good cause for late filing. Form SSA-437-BK provides:

“If you disagree with a decision that was made on a claim you filed for benefits, you **must** appeal that decision according to the procedure described in the notice of appeal rights that accompanied the decision. If you believe the decision was based on discrimination, you may file a complaint of discrimination using this form, but even if we find that you were discriminated against, that would not mean that the decision on your claim for benefits would change. A decision can still be a correct application of the law even if the decision-maker was biased. The **only** way to get the benefits decision changed is to file an appeal of that decision.”

After we receive an allegation of discrimination involving an ALJ based on the categories discussed above, the Division of Quality Service (or its designee) will assist the Office of the General Counsel or its designee in its review of the allegation of discrimination. The Division of Quality Service will prepare a copy of its findings and supporting documents. We will use the

facts and documents stemming from the Division of Quality Service's investigation to make a finding of discrimination or non-discrimination.

We should issue a decision within 180 days of receiving the complaint. We may dismiss complaints for a lack of jurisdiction, such as those that allege discrimination based solely on a denial of benefits under SSA's program law and not on race, color, national origin (including English language ability), religion, sex, sexual orientation, age, disability or in retaliation for having previously filed a civil rights complaint. We will also dismiss complaints alleging discrimination on bases other than those identified in the complaint form or letter.

Within 30 days after a complainant receives our decision, he or she may request reconsideration of our decision on or dismissal of his or her civil rights complaint, and we should issue a reconsideration decision within 60 days of receiving a request for reconsideration.

EFFECTIVE DATE: This SSR is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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